

# ***CLEANUP AND ABATEMENT ACCOUNT FUNDING PROGRAM GUIDELINES***

*Adopted  
December 11, 2018*



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## ***INTRODUCTION***

The purpose of this document is to establish the process and criteria for the allocation and administration of Cleanup and Abatement Account (CAA) funding for eligible projects. These Guidelines will be utilized in soliciting applications, prioritizing and evaluating project proposals, and awarding funding for projects that clean up waste or abate the effects of waste on waters of the State or address an urgent drinking water need. “Waters of the State” includes both surface water and groundwater.

The CAA is established by Water Code sections 13440 to 13443. The CAA is funded by various monies including those: appropriated by the Legislature; collected as part of criminal penalties or civil proceedings brought pursuant to Division 7 of the Water Code; collected or recovered by the State Water Resources Control Board (State Water Board) or a Regional Water Quality Control Board (Regional Water Board) under Chapter 6.7 of Division 20 of the Health and Safety Code; and repaid by loan recipients, including principal, interest, and fees. (Wat. Code, § 13441.)

In some instances, a court judgment or settlement agreement specifies how collected funds are to be spent (e.g., a specific cleanup, investigation, or supplemental environmental project [SEP]). Those funds may be set aside in the CAA for that identified purpose, consistent with statutes governing uses of the CAA.

The CAA is also used as a “clearing account” for the Site Cleanup Program (SCP). Responsible parties (RPs) sign a cost recovery agreement with a Regional Water Board, CAA funds are used to pay the associated Regional Water Board staff oversight costs, and costs recovered from RPs return to the CAA.

After accounting for these needs and other prior encumbrances, remaining CAA funds may be utilized for the purposes allowed by the statute. Consistent with these Guidelines, available funds may be awarded to two categories of projects, which are addressed in two separate sections of these Guidelines:

- Section A: projects that clean up waste and/or abate the effects of waste on waters of the State
- Section B: projects that address urgent drinking water needs

Section C describes the funding agreement process and requirements that apply to approved projects.

These CAA Guidelines also contain two Appendices. Appendix A outlines the required financial documents for loan applicants. Appendix B provides a list of state laws that apply to funding provided by state agencies.

The Deputy Director of the Division of Financial Assistance (DFA) may make clarifying, non-substantive amendments to these Guidelines. The Deputy Director of DFA may also substantively update and amend the appendices included in these Guidelines. Future changes to these Guidelines may be necessary due to changes in law or in State Water Board policy. If substantive changes are necessary, amendments to the Guidelines will be considered by the State Water Board.

These Guidelines and any amendments thereto are not subject to Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

## ***DEFINITIONS***

**Acceptable Result** – a project, when completed, provides for the most immediate and reliable supply of domestic water for the duration of the urgent drinking water need or threatened emergency being addressed, as determined by the State Water Board.

**CAA funding** – funding from the State Water Pollution Cleanup and Abatement Account (CAA).

**Community water system** – a public water system that serves at least 15 service connections used by permanent residents or regularly serves at least 25 permanent residents of the area served by the system (Health & Saf. Code, § 116275(i).)

**Contamination** – any impairment of the quality of water to a degree which, in the judgment of the State Water Board, creates a hazard to the public health. Contamination may be caused by any physical, chemical, biological, or radiological substance or matter in water. Water that is subject to contamination is “contaminated.”

**Disadvantaged Community (DAC)** – a community with an annual median household income that is less than 80 percent of the statewide annual median household income ([Wat. Code, § 79505.5.](#))

**Domestic water supply or supply of domestic water** – a safe, dependable, and reliable supply of water for human consumption.

**Drought** – a period of abnormally dry weather sufficiently prolonged to cause a serious hydrological imbalance and potential severe domestic water shortages. For the purposes of these Guidelines, drought includes, but is not limited to, periods of time covered by the Governor’s declaration of a drought emergency either statewide or countywide.

**Emergency** – a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

**Human consumption** – the use of water for drinking, bathing or showering, hand washing, oral hygiene, or cooking, including, but not limited to, preparing food and washing dishes. (Health & Saf. Code, § 116275(e).)

**Initial operation costs** – costs incurred for start-up and testing of project facilities and components to assure such facilities and components are properly operational; such costs do not include costs of operation or maintenance incurred subsequent to placing the facilities or components into service.

**Not-For-Profit Organization** – means an organization that is operated on a not-for-profit basis and is either controlled by a local public body or bodies or has a broadly based ownership by, or membership of, people of the local community ([Wat. Code, § 13400](#)).

**Prime Rate** – the prime interest rate that banks use in lending to customers with high credit scores.

**Public agency** – any city, county, city and county, district, joint powers authority, or other political subdivision of the state.

**Public water system** – a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following: (1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system that are used primarily in connection with the system. (2) Any collection or pretreatment storage facilities not under the control of the operator that are used primarily in connection with the system. (3) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. (Health & Saf. Code, § 116275(h).)

**Responsible Party (RP)** – An individual or entity that is responsible for the discharge or threatened discharge of waste into waters of the State or for an actual or threatened condition of pollution or nuisance.

**State** – the State of California.

**State Water Resources Control Board (State Water Board)** – the State Water Board itself and the State Water Board official(s) delegated authority by the Board to administer funding under these Guidelines.

**Supplemental Environmental Project (SEP)** – an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake, in settlement of the action and to offset a portion of a civil penalty. (Pub. Resources Code, § 71118 (a)(3).)

**Threatened emergency** – an imminent threat of a severe domestic water outage, and experienced by an eligible applicant or a person represented by an eligible applicant, that requires immediate action to avoid or mitigate risk to public health and safety.

**Urgent drinking water need** – a severe domestic water supply outage caused by drought or contamination, or other emergency or threatened emergency, and experienced by an eligible applicant or a person represented by an eligible applicant, that requires immediate action to avoid or mitigate risk to public health and safety.

**Waste** – includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal. (Wat. Code, § 13050.)

**Water outage or water supply outage** – prolonged or repeated inability to provide a supply of domestic water that is safe for human consumption and sufficient to meet average daily demand or inability to provide water at adequate pressure as determined by California's applicable waterworks standards.

## ***SECTION A: CLEANUP AND ABATEMENT PROJECTS***

### **A.1. PURPOSE AND OVERVIEW**

Section A of the Guidelines establishes the process and criteria for the allocation and administration of CAA funding in soliciting applications, prioritizing and evaluating project proposals, and awarding funding for projects that clean up waste or abate the effects of waste on waters of the State. "Waters of the State" includes both surface water and groundwater.

### **A.2. PROGRAM PRIORITIES AND FUNDING AVAILABILITY**

Moneys are paid into the CAA from the various sources listed in the Introduction to the Guidelines. The amount of these deposits is not known in advance. Consequently, the approval process must take the program priorities and revenue uncertainty into account.

#### **A.2.1. Program Priorities**

In general, the CAA should only be utilized when other funding sources are not available to address the need. The State Water Board will categorize Projects based upon the urgency of the need:

##### **A.2.1.1. Tier 1 - Primary Urgency**

- a) Emergency projects that require immediate action to mitigate a significant threat to the environment or a threat to public health and safety where there has been no viable RP identified, or where the viable RP is unwilling or unable to adequately respond to the emergency.
- b) Urgent drinking water needs. The funding and implementation of these projects will follow the guidelines provided as Section B: Funding Guidelines for Urgent Drinking Water Needs.

##### **A.2.1.2. Tier 2 – Secondary Urgency**

- a) Projects that address a less urgent need to clean up a waste or abate the effects of a waste on waters of the State where no viable RP has been identified, or where the viable RP is unwilling or unable to adequately respond.

#### **A.2.2. Funding Availability**

##### **A.2.2.1. Verification of Fund Availability**

State Water Board staff will estimate fund availability based on the current and projected uncommitted CAA balance, projecting over a minimum of five years. This evaluation will be performed at least annually.

##### **A.2.2.2. Funding Prioritization**

Tier 1 funding requests are accepted on a continuous basis. Subject to the availability of funding, the State Water Board will give priority to requests where there is the greatest threat to public health and safety, regardless of when the request for funding is received. In determining priorities for funding projects, the State Water Board will also consider the applicant's access to or ability to qualify for alternative funding sources.

Tier 2 funding requests will be accepted through a separate solicitation that may or may not occur each year. Generally, if the uncommitted CAA balance is projected to be large enough to support a Tier 2 project solicitation, for example at least \$1 million, then a new solicitation for Tier 2 projects will be announced and processed.

#### **A.2.2.3. Loans**

Though the State Water Board is authorized to make funds available from the CAA for a loan to an eligible entity (Wat. Code, § 13442.5), loans for cleanup and abatement projects are not addressed herein as there is not anticipated to be a significant demand.<sup>1</sup> Loans for projects that address urgent drinking water needs are discussed in Section B.

### **A.3. ELIGIBILITY REQUIREMENTS**

The State Water Board will evaluate project proposals by applicants based on project type, project timeline, project cost, and alternative funding source considerations.

#### **A.3.1. Eligible Grant Applicants**

Pursuant to section 13442 of the Water Code, the following entities are eligible to apply for funding to clean up a waste or abate the effects of waste on waters of the State, provided the entity has the authority to undertake the cleanup or abatement activity for which it seeks funding:

- A public agency.<sup>2</sup>
- A tribal government that is on the California Tribal Consultation List maintained by the Native American Heritage Commission and is a disadvantaged community (DAC), that agrees to waive tribal sovereign immunity for the explicit purpose of regulation by the State Water Board pursuant to Division 7 of the Water Code, as well as for enforcement of the funding agreement.
- A not-for-profit organization serving a DAC,<sup>3</sup> with authority to clean up or abate the effects of a waste.
- A community water system serving a DAC.

#### **A.3.2. Eligible Project Types**

The CAA may be used to fund projects for the cleanup or abatement of waste where there are no viable RPs available to undertake the work. CAA funding may also be used for projects for which there is a viable RP, but the RP is unable or unwilling to undertake the work in a reasonable timeframe to mitigate or eliminate the public health or environmental

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<sup>1</sup> One potential exception is for emergency wastewater projects. In these cases, requests from an eligible entity which owns and operates a wastewater treatment system may be eligible for a loan. The financial review process and loan terms will follow the process outlined for urgent drinking water needs projects, see Section B.2.2.

<sup>2</sup> Eligible public agencies include Regional Water Boards. The State Water Board may provide funding for Regional Water Boards' cleanup and abatement activities, including overseeing and tracking the implementation of an SEP. Unless a specific exemption applies, State contracts are subject to requirements outlined in the Government Code, Public Contracts Code, and the Department of General Services's State Contracting Manual.

<sup>3</sup> A not-for-profit serving a DAC may be formed to benefit DACs or implementing a project that benefits a DAC.



threat. The State Water Board may seek to recover CAA expenditures from an identified RP, including by initiating civil action and recording liens against real property.

Eligible Tier 2 projects include but are not necessarily limited to planning and design including pilot projects, or implementation of the following:

- Cleanup of Oil/Diesel/Petroleum Spill, Mining Waste Leachate Drainage, or other Discharges.
- Removal of Contaminated Sediment, Illegally Dumped Material, or other Debris.
- Remediation of Contaminated Groundwater.
- Watershed Restoration, including Habitat Restoration, Erosion Control, Algae Abatement, etc.

### **A.3.3. Ineligible Project Types**

Projects with an RP that has a legal obligation and financial capacity to address the waste are not eligible for CAA funding. This does not preclude funding where the RP is recalcitrant and action must be taken promptly to address a serious threat to public health and safety. In such cases, the RP would not receive funding, but a responsible, eligible entity capable of completing the required work could receive funding.

## **A.4. GRANT AMOUNTS**

The Deputy Director of DFA and the Executive Director of the State Water Board are delegated authority via these Guidelines to approve up to \$500,000 in CAA funds per project, for routine or non-controversial projects. Any non-routine or controversial projects, or CAA approvals exceeding \$500,000 per project will require State Water Board approval.

## **A.5. FUNDING REQUEST AND DETERMINATION PROCESS**

### **A.5.1. Application Process**

Applications for Tier 1 projects will be accepted continuously. Solicitations for Tier 2 projects may be offered periodically as described in Section A.2.2.2. Those wishing to be informed about the availability of Tier 2 funds should subscribe to the CAA email list. Instructions regarding how to subscribe are provided on the CAA webpage:

[\(http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/caa/\)](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/caa/).

Potential applicants should contact DFA staff at (916) 319-9066 or send an email to [dfa-caa@waterboards.ca.gov](mailto:dfa-caa@waterboards.ca.gov) to discuss whether a project complies with the purposes stated in the Water Code. Additional information is located on the CAA webpage.

After applicants verify eligibility and availability of necessary documentation and review General Program Requirements outlined in Section C.3.3, eligible recipients can initiate a request for CAA funding. Applications are submitted via the Financial Assistance Application Submittal Tool (FAAST), instructions for which are posted on the CAA webpage.

The Regional Water Board Executive Officers (or their designees) may request funds by phone, by email, or in person for amounts of \$500,000 or less when there is an emergency need to clean up or abate a condition of pollution. These requests may be on behalf of other eligible entities such as public agencies, tribal governments, and not-for-profit organizations serving a DAC. Such requests should be directed to the Deputy Director of DFA, the Executive Director of the State Water Board, or their designee(s).

#### **A.5.2. Application Review Process**

Factors which, at a minimum, will be considered in determining whether to approve funding include the following:

- (1) Applicant eligibility
- (2) Severity of the need, including whether the project addresses an emergency;
- (3) Cause of the emergency and whether it could have been avoided;
- (4) Project effectiveness, i.e., whether the project effectively addresses the need;
- (5) Cost-effectiveness, i.e., whether the project addresses the need at a reasonable cost when considering the cost per benefitted person and feasible alternatives;
- (6) Whether the eligible recipient has a reasonable project schedule and spending plan to complete the project in a timely and expeditious manner;
- (7) Whether there are more appropriate funding sources available to resolve the issue;
- (8) Availability of CAA funds; and
- (9) Whether the Regional Water Quality Control Board concurs that the project is needed to cleanup or abate the waste.

The State Water Board, acting as the lead agency or responsible agency under the California Environmental Quality Act (CEQA), will make the appropriate environmental findings before determining whether to approve funding for a project.

Requests for CAA funding will be reviewed based on the above factors and DFA staff will provide a recommendation to approve or deny the funding request to the Deputy Director of DFA. The Deputy Director or Designee will make a final approval or denial determination.

## ***SECTION B: URGENT DRINKING WATER NEEDS PROJECTS***

### **B.1. PURPOSE AND OVERVIEW**

Section B of the Guidelines establishes the process and criteria to solicit applications, prioritize and evaluate project proposals, and award funding for projects that address urgent drinking water needs.

### **B.2. PROGRAM PRIORITIES AND FUNDING AVAILABILITY**

As discussed in Section A.2.1, projects to address urgent drinking water needs are considered a high priority.

#### **B.2.1. Funding Prioritization**

Funding requests to address urgent drinking water needs are accepted on a continuous basis. Subject to the availability of funds, the State Water Board will give priority to requests for funding where there is the greatest threat to public health and safety, regardless of when the request for funding is received. In determining priorities for funding projects, the State Water Board will also consider the applicant's access to or ability to qualify for alternative funding sources. The State Water Board will make every effort to access, and require an eligible recipient to access, other funds available for a project to address urgent drinking water needs, including other State, federal or local funds, prior to using the CAA funding made available under these Guidelines. The State Water Board may partially fund a proposed project with CAA funds and require the eligible recipient to either use their own funds or apply to other programs to complete the project.

#### **B.2.2. Loans**

Section 13442.5 of the Water Code authorizes the State Water Board to make loans with moneys from the CAA and requires the State Water Board to adopt Guidelines for CAA loan allocation and administration. Both grant and loan funding may be provided for urgent drinking water needs projects. The following terms apply to any CAA loans:

- (1) The term of the loan shall not exceed the lesser of 10 years or the useful life of the project.
- (2) The interest rate will be consistent with the current Prime Rate but may be reduced on a case-by-case basis, based on the results of DFA's review of the applicant's financial information indicating a need for a reduced rate in order for the applicant to demonstrate ability to repay the loan.

Additional requirements and criteria related to loan funding are outlined in Section B.5.

## **B.3. ELIGIBILITY REQUIREMENTS**

### **B.3.1. Eligible Funding Applicants**

Pursuant to the Water Code, the following entities are eligible to apply for funding to address an urgent drinking water need, provided the entity has the authority to undertake the activity for which it seeks funding:

For grants (section 13442 of the Water Code):

- (1) A public agency that serves a DAC. The Executive Director of the State Water Board, at his or her discretion and on a case-by-case basis, may deem a public agency eligible for funding in order to assist a community that is not a DAC<sup>4</sup>;
- (2) A tribal government that is on the California Tribal Consultation List maintained by the Native American Heritage Commission and is a DAC, that agrees to waive tribal sovereign immunity for the explicit purpose of regulation by the State Water Board pursuant to Division 7 of the Water Code, as well as for enforcement of the funding agreement;
- (3) A not-for-profit organization serving a DAC; or
- (4) A community water system that serves a DAC.

For loans (section 13442.5 of the Water Code):

- (1) A public agency;
- (2) A not-for-profit organization; or
- (3) A community water system.

### **B.3.2. Eligible Project Types**

Eligible project activities include, but are not limited to, the following:

- (1) Provision of interim alternate water supplies, such as bottled or hauled water, when the existing water system cannot provide an adequate supply of domestic water. Generally interim alternate water supplies will be considered if drinking water does not meet primary drinking water standards because of an inadequate source to meet basic demands, a Primary Maximum Contaminant Level (MCL) exceedance, or surface a water treatment rule violation. Interim alternate water supplies, such as bottled or hauled water, may be provided to address other types of drinking water quality issues if the Division of Drinking Water (DDW) determines that immediate action is necessary to protect human health and safety.
- (2) Emergency improvements or repairs to existing water systems as necessary to provide an adequate supply of domestic water. Improvements or repairs will typically only be funded if shown to be a more cost-effective interim

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<sup>4</sup> Public primary, secondary, and high schools are deemed to be serving a DAC.

solution than provision of interim alternate water supplies. Eligible improvements or repairs include but are not limited to:

- A. Well rehabilitation or replacement;
- B. Emergency interties, extension of service, or consolidation projects;
- C. Treatment systems;
- D. Rented, borrowed or purchased equipment;
- E. Design, installation and Initial Operation Costs.

- (3) The Deputy Director of DFA is authorized, under these Guidelines, to allocate funds for projects or programs implemented by not-for-profit organizations or counties, as desired to address specific urgent drinking water needs on a regional or statewide basis.

### **B.3.3. Ineligible Project Types**

Ineligible projects for this funding include, but are not limited to:

- (1) Projects that are not addressing an urgent drinking water need;
- (2) Requests to fund fire flows and fire hydrants;
- (3) Requests to subsidize or offset increases in water rates;
- (4) Projects for which there is a RP and the RP has a legal obligation and financial capacity to meet the urgent drinking water need. This does not preclude funding where the RP is recalcitrant, action must be taken promptly to address a serious threat to public health and safety, and adequate provision is made to recover CAA expenditures from the RP.

## **B.4. FUNDING AMOUNTS**

The Deputy Director of DFA and the Executive Director of the State Water Board are delegated authority via these Guidelines to approve up to \$500,000 in CAA funds per project, for routine or non-controversial projects. Any non-routine or controversial projects, or CAA approvals exceeding \$500,000 per project will require State Water Board approval.

## **B.5. FUNDING REQUEST AND DETERMINATION PROCESS**

### **B.5.1. Application Process**

Potential applicants should contact DFA staff at (916) 319-9066 or send an email to [dfa-caa@waterboards.ca.gov](mailto:dfa-caa@waterboards.ca.gov) to discuss eligibility and application requirements.

Additional information is located on the CAA webpage:

([http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/caa/](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/caa/)).

Eligible entities may be eligible to receive grant funding if they serve disadvantaged communities with a Median Household Income (MHI) less than 80% of the Statewide MHI. Eligible entities should demonstrate that the community served by the project area is a DAC by providing MHI information obtained through the U.S Census Website at:

<http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>. In addition, property values,

income surveys or MHI determination obtained through other programs may be used in determining eligibility. An MHI determination is not required for loan applicants.

Eligible entities may be required to provide financial statements to demonstrate that there are inadequate financial reserves available to address the urgent drinking water need. In addition, eligible privately-owned entities such as individuals, sole proprietors, partnership, corporation and limited liability company, are required to provide the following information:

- Owners' household information, including income information of each household member, and household living expenses
- Assets and liabilities
- Trust agreements

Based on the review of financial documents, additional documentation may be required. See Appendix A for additional financial documents required for all loan applications. Loan applicants that are not publicly-owned community water systems are strongly advised to consult with DFA staff regarding the proposed source(s) of revenue for repayment prior to submitting an application.

After applicants verify eligibility and availability of necessary documentation, and review General Program Requirements outlined in Section C.3.3, there are multiple ways for an eligible recipient to initiate a request for CAA funding:

- (1) Eligible entities can submit an application via FAAST per the instructions posted on the CAA webpage.
- (2) The Division of Drinking Water District Office or Regional Water Board may submit an application on behalf of the applicant using the template posted on the CAA webpage. An eligible recipient, or a local Health Officer or the local Director of Environmental Health acting on behalf of an eligible recipient may contact the local DDW District Office (District Office) regarding funding requests for urgent drinking water needs. The location and contact information for the District Offices can be found at:  
[http://www.waterboards.ca.gov/drinking\\_water/programs/documents/ddwem/DDW\\_districtofficesmap.pdf](http://www.waterboards.ca.gov/drinking_water/programs/documents/ddwem/DDW_districtofficesmap.pdf).

### **B.5.2. Application Review Process**

For projects addressing an urgent drinking water need, the State Water Board will consider a number of factors in determining eligibility for CAA funding, including but not limited to:

- (1) The severity of the urgent drinking water need;
- (2) Whether there is an actual documented water outage, and the duration and extent of the outage(s);
- (3) Cause of the emergency and whether it could have been avoided;

- (4) Whether the threatened emergency involves a water quality issue due to natural or man-made contamination;
- (5) Whether the urgent drinking water need or threatened emergency is, or is expected to be, acute (of short term duration) or chronic (long term duration);
- (6) Any drinking water response actions taken by the relevant local Health Officer, Director of Environmental Health, Director of Emergency Services, or similar official;
- (7) Whether the eligible recipient has implemented mandatory water conservation measures, and whether additional conservation measures are possible;
- (8) Whether the proposed project will provide an Acceptable Result;
- (9) Whether the proposed project is cost-effective, i.e., the project provides an Acceptable Result at a reasonable cost when considering the cost per person benefiting from the project or the cost per service connection established, and other feasible alternatives;
- (10) Whether the eligible recipient has submitted an application for funding for a permanent solution to address the urgent drinking water need or threatened emergency; and
- (11) Whether the eligible recipient has a reasonable project schedule and spending plan to complete the project in a timely and expeditious manner to provide an Acceptable Result;
- (12) Whether there are other available sources of funds to resolve the urgent drinking water need or threatened emergency for which funds are requested; and
- (13) Whether the eligible recipient has available reserves to fund the project in part or whole.

In determining eligibility for loan funding, the State Water Board will also consider whether the applicant has the ability to repay the loan, and adequate revenue or other collateral to secure the loan, while continuing operations and maintenance of the water system.

The State Water Board, acting as the lead agency or responsible agency under CEQA, will make the appropriate environmental findings before determining whether to approve funding for a project.

Requests for CAA funding will be reviewed based on the above factors and a recommendation to approve or deny the funding request will be made to the Deputy Director of DFA. The Deputy Director or Designee will make a final approval or denial determination.

## ***SECTION C: FUNDING PROCESS***

### **C.1. APPLICANT NOTIFICATION**

State Water Board staff will notify the recipient of its funding determination. The date at which costs can be incurred will be provided in the notification of funding determination, if the project is approved.

Consistent with Water Code section 13442, and only to the extent necessary to take immediate action to protect public health and safety, an emergency cleanup project that is funded by a grant from the State Water Board may incur costs upon notification via email from the Deputy Director or delegee, conditioned on execution of a grant agreement, except where this requirement is waived by the Deputy Director.

Eligible recipients awarded a grant under these Guidelines must agree to complete the project in a timely and expeditious manner. If funding from other sources will supplement CAA funding, the Recipient may be required to demonstrate that such additional funding has been secured prior to execution of the CAA funding agreement or prior to funding disbursement.

Except when the Regional Water Board is the recipient, CAA funds cannot be disbursed or reimbursed to the recipient until a funding agreement between the State Water Board and the recipient has been executed and the recipient has submitted required documentation of project work and expenses.

The Recipient will generally be required to submit a resolution of its governing body, or equivalent, identifying the person(s) authorized to sign a funding agreement. Funding agreements are not executed until signed by authorized representatives of the grant recipient and the State Water Board. Potential applicants are advised to review the standard conditions and ensure their organization can comply with all requirements in the agreement as the standard conditions generally will not be modified.

Funds may be expended on the project from the date specified in the project approval provided to the recipient, subject to any conditions in the approval. Funding recipients are encouraged to consider the potential time that may pass between project expenditure and CAA funding disbursement when arranging for payment of any contractors. The recipient will have sole responsibility to resolve all third-party bid or contractual disputes.

If an agreement is approved and at a later date it is determined that the recipient and/or the funded project is not eligible under these Guidelines or the recipient has materially violated the terms and conditions of funding, the recipient will be required to repay grant funding to the State Water Board.



Funding agreements may be terminated by written notice at any time prior to completion of the project, at the option of the State Water Board, upon violation by the recipient of any material provision after such violation has been called to the attention of the recipient and after failure of the recipient to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by the State Water Board.

Non-responsiveness to State Water Board inquiries and requests for information has been an issue with a handful of past applicants and grant recipients. Such non-responsiveness slows down the funding process, resulting in grant funds being left unused for a substantial and unwarranted amount of time. Due to the critical and potentially immediate need for this program's funding, lack of responsiveness subsequent to project approval and prior to funding agreement execution may result in withdrawal of the grant award. Lack of responsiveness subsequent to funding agreement execution may result in termination of the funding agreement.

## **C.2. DISPUTES**

Approvals or actions taken by the DFA's predecessors pursuant to statutes, regulations, and policies in affect at the time of the approvals or actions remain valid. DFA approvals or actions after the effective date of these Guidelines that conflict with or are inconsistent with approvals or actions taken by the DFA's predecessors will be resolved by the Deputy Director of DFA.

An applicant or recipient may appeal a staff decision within thirty (30) days to the Deputy Director of DFA or designee, for a final DFA decision. An applicant or recipient may appeal a final DFA decision to the State Water Board within thirty (30) days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final DFA decision, this decision will represent a final agency action on the dispute.

Where a financing agreement has been executed, the dispute provisions of that agreement will control, and the dispute provisions of this section are inapplicable.

## **C.3. PROJECT IMPLEMENTATION**

### **C.3.1. Reporting**

Specific reporting requirements may be detailed in the funding agreement. A recipient will typically be required to submit monthly or quarterly progress reports that detail activities that have occurred during the applicable reporting period. Reporting is required even if no grant related activities took place during the reporting period. At the conclusion of the project, the recipient typically submits a Final Project Summary, Final Project Inspection and

Certification, and a comprehensive Draft and Final Project Report. Templates will be made available to recipients, where possible.

### **C.3.2. Reimbursement of Costs**

Costs for work performed within the terms of the funding agreement may be eligible for reimbursement. Reasonable and necessary eligible expenses incurred on or after the start date listed in the funding agreement and prior to the project completion date may be reimbursed.

Reimbursable costs may include the reasonable costs of planning, engineering, design, permitting, preparation of environmental documentation, environmental mitigation, easement and land purchases, project implementation, project monitoring within the term of the agreement, and education and outreach necessary for successful project implementation. Typical administrative costs of up to 5% of the total project cost may be eligible for reimbursement.

Costs that are not reimbursable with grant funds include, but are not limited to:

- a) Costs incurred outside the terms and scope of the funding agreement with the State Water Board;
- b) Education and outreach not directly related to project implementation;
- c) Purchase of equipment that is not an integral part of the project;
- d) Establishing a reserve fund;
- e) Expenses incurred in preparation of the proposal;
- f) Payment of principal or interest of existing indebtedness or any interest payments;
- g) State or federal taxes.
- h) Costs incurred for non-compliance with any local, state, or federal regulation, or any permit or other order implementing a local, state, or federal requirement, including fines, penalties, and legal fees.

Indirect costs typically are not included in the project budget, but the Deputy Director of DFA may consider reimbursing certain indirect costs on a case-by-case basis. If indirect costs are included in the approved budget of a funding agreement, they may be reimbursed consistent with the indirect costs requirements outlined in the General Program Requirements below, and the terms and conditions of the funding agreement.

### **C.3.3. General Program Requirements**

All applicants that are awarded a grant must comply with the following general program requirements. Before proceeding with the application process, applicants must consider their ability to comply with these requirements.

**Conflict of Interest:** Applicants are subject to State and federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent funding agreement being declared void. Other legal action may also be taken. Before submitting an application, applicants may wish to seek additional guidance or legal counsel regarding conflict of interest requirements. Applicable statutes include, but are not limited to, Government Code section 1090 and Public Contract Code sections 10410 and 10411.

**Confidentiality:** When submitting a funding application to the State Water Board, the applicant will be required to waive the privacy and confidentiality of its application package. Most other records produced or received by the State Water Board will be public records subject to potential disclosure to the public. The locations of all funded projects, including the locations of management measures or practices implemented, must be reported to the State Water Board and Regional Water Boards and may be made available to the public. The Water Boards may report project locations to the public through internet-accessible databases. The State Water Board uses Global Positioning System (GPS) coordinates for project and sampling locations.

**Related Litigation:** A Recipient cannot use CAA funds under a funding agreement to pay costs associated with any litigation the recipient pursues. Regardless of whether the project is the subject of litigation, the recipient agrees to complete the project funded by the funding agreement or to repay all grant funds plus interest.

**Indirect Cost Requirements:** Agreements may include provisions to reimburse for indirect costs. This is only for expenses up to and including 10% of the modified total direct costs (MTDC). MTDC equals the sum of personnel services, operating expenses, travel, and up to, and including, the first \$25,000 of sub-contracting expenses. MTDC does not include expenses for equipment.

Indirect costs are costs incurred for common or joint objectives that cannot be readily identified with a particular project. The State Water Board does not approve an individual recipient's indirect methodology, or review backup documentation associated with the indirect costs claimed. It is the recipient's responsibility to ensure consistency in the approach, to verify that ineligible costs are not claimed, and to maintain backup documentation and source documents to support indirect cost accounting. All such documentation must be available in the case of an audit. Recipients should request reimbursement only for actual costs, not budgeted costs. No costs invoiced as part of indirect costs should be included elsewhere as a direct cost, and fringe should be included in administration costs. The rate of reimbursement of indirect costs must be commensurate with the rate of reimbursement of direct costs

**Data Management:** When applicable, projects must include appropriate data management activities so that recipients can provide data in the format necessary to upload into the applicable statewide data systems. Typical requirements may include:

- Groundwater quality monitoring data must be integrated into GeoTracker. Data will be available to the stakeholders, agencies, and the public. Please see the GeoTracker website <http://geotracker.waterboards.ca.gov/> for additional information.
- Groundwater monitoring data also must be integrated into the Groundwater Ambient Monitoring & Assessment (GAMA) database. Please see the GAMA website <http://waterboards.ca.gov/gama/> for additional information.
- Drinking water quality data from public water supply sources must be submitted electronically to the Division of Drinking Water. Data are submitted via the Electronic Data Transfer Portal at: <http://drinc.ca.gov/WQM/>. For more information regarding the requirements for data submittal, go to: [https://www.waterboards.ca.gov/drinking\\_water/certlic/drinkingwater/EDTlibrary.html](https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/EDTlibrary.html)

**State Cross-Cutters:** Miscellaneous state laws apply to funding provided by state agencies. The recipient must comply with, or not be prohibited from receiving funding under, these laws. A list is provided in Appendix B.

## ***APPENDIX A: ADDITIONAL FINANCIAL DOCUMENTS FOR LOAN APPLICANTS***

Eligible loan applicants must provide the following:

- a. A copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of each party.
- b. Most recent three (3) years of financial statements or tax returns.
- c. Adopted budget for future year(s), if available, and a projected budget through the first payment, showing expected revenue and expenditures.
- d. Current average residential water rate and calculations employed to represent such a rate. If the average residential water rate is expected to increase following submittal of an application as a result of previously adopted water rate increases, then the applicant shall provide the anticipated average residential water rates and an adopted schedule for their implementation.
- e. Information regarding current, prior, or pending material events (e.g. bankruptcy, defaults, litigation, Grand Jury findings or indictments).
- f. Information on Existing Debt:
  - A schedule of all relevant debt, along with a copy of each relevant debt document (e.g. indenture, installment agreement, loan, or note). This schedule will rank existing debt according to priority in relation to the proposed CAA debt (senior, parity, or subordinate). The applicant must also identify any conditions in related debt obligations that must be satisfied prior to executing the CAA loan agreement or that may otherwise affect the CAA loan agreement or its intended purposes; and identify any debt limit to which it is subject.
  - Or, if the applicant has no existing relevant debt, the applicant's Authorized Representative must verify this in writing.
- g. Proof that the applicant is unable to get a loan from a financial institution in a timely manner. This will be in the form of a loan application denial letter from a financial institution. If such denial cannot be provided prior to funding approval, then funding approval will be conditioned up provision of such denial letter prior to funding agreement execution.

## ***APPENDIX B: STATE CROSS-CUTTERS***

- a. The California Environmental Quality Act (CEQA), as set forth in Public Resources Code sections 21000 et seq. and in the CEQA Guidelines at Title 14, Division 6, Chapter 3, Section 15000 et seq.
- b. Water Conservation requirements, including regulations in Division 3 of Title 23 of the California Code of Regulations.
- c. Monthly Water Diversion Reporting requirements, including requirements set forth in Water Code section 5103.
- d. Public Works Contractor Registration with Department of Industrial Relations requirements, including requirements set forth in Sections 1725.5 and 1771.1 of the Labor Code.
- e. Volumetric Pricing & Water Meters requirements, including the requirements of Water Code sections 526 and 527.
- f. Urban Water Management Plan requirements, including the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.).
- g. Urban Water Demand Management requirements, including the requirements of Section 10608.56 of the Water Code.
- h. Delta Plan Consistency Findings requirements, including the requirements of Water Code section 85225 and California Code of Regulations, title 23, section 5002.
- i. Agricultural Water Management Plan Consistency requirements, including the requirements of Water Code section 10852.
- j. Charter City Project Labor Requirements, including the requirements of Labor Code section 1782 and Public Contract Code section 2503.